IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11906 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KAMALKANT J BHATT

Appearance:

1. Special Civil Application No. 11906 of 2000

MR ASHISH M DAGLI for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/01/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Ashish M. Dagli for the petitioner Corporation and Mr. P.H. Pathak, the learned advocate for the respondent workman. In this petition, the petitioner has challenged the award made by the labour court, Amreli in Reference Case No. 514 of

1998 dated 15th March, 2000 whereby the labour court, Amreli has set aside the order of dismissal dated 10th July, 1995 as illegal, unjust and has ordered to reinstate the respondent workman with continuity of service but without back wages for the intervening period and has also imposed the punishment of stoppage of two annual increments of the respondent workman with permanent effect. The labour court has directed the petitioner corporation to reinstate the respondent workman within thirty days of the publication of the award.

Learned advocate Mr. Ashish Dagli appearing for the petitioner Corporation has raised the contention that since the inquiry has been admitted by the respondent workman and the findings thereof were not challenged by the respondent workman, in that circumstances, the labour court has no power under section 11A of the Industrial Disputes Act, 1947 to modify or set aside the order of punishment. He has also pointed out that the observations made by the labour court that the respondent workman has completed long service is basically wrong because the respondent workman has completed only four years of service and if the labour court would have considered these four years of service, then, the labour court would certainly have imposed some more punishment instead of stoppage of two annual increments with future effect. According to him, therefore, the award made by the labour court is required to be quashed and set aside.

On the other hand, learned advocate Mr. P.H. Pathak appearing for the respondent workman has submitted that when the bus of the respondent workman was checked by the checking party, at that time, the bus has crossed the distance of only four kms. He has also submitted that the group of six passengers had boarded from Una and they had boarded the bus for reaching at Bhacha. He has submitted that there were 35 passengers in all in the bus and the bus was checked while the respondent workman was doing the road booking and after crossing 4 kms. distance, the respondent workman had been issuing tickets to each passengers and at the relevant point of time, the moment he recovered the amount of fare from the group of six passengers who had boarded for Bhacha from Una, all of a sudden, his bus was checked and, therefore, the transaction was not over and prior thereto, the bus was checked and therefore, it cannot be said that there was any dishonest intention on the part of the respondent workman to misappropriate the amount of fare. He has also submitted that considering these aspects, the workman had voluntarily filed the purshis before the

labour court and has not pressed the relief of back wages for the interveing period. He has submitted that the labour court has considered the over all facts and circumstances of the case and past record which was good, according to the findings recorded by the labour court. He has submitted that considering that this is his first misconduct, the labour court has exercised the powers vested in it under section 11A of the Industrial Disputes Act, 1947 while coming to the conclusion that looking to the gravity of the misconduct on the part of the respondent workman, impugned order of dismissal is unjustified, the labour court has granted only reinstatement with continuity of service but without back wages for the intervening period. He has submitted that considering the misconduct which has been found to be proved that the respondent workman had been doing the road booking in a local bus which is amounting to committing breach of the rules of the corporation, the labour court has imposed the punishment of stoppage of two annual increments with recurring effect and, therefore, the labour court has made the award after considering all the facts and circumstances of the case while keeping in view the misconduct of the respondent workman and, therefore, this Court should not interfere with the impugned award. He has also submitted that in view of the punishment of stoppage of two annual increments with future effect, the workman would be losing the benefits of two increments till the date of his retirement and, thus, the punishment imposed by the labour court in place of dismissal is having recurring effect on the workman and, therefore, now this Court should not interfere with such an award made by the labour court while exercising the powers under Article 226 and/or 227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the parties. I have perused the award made by the labour court. In this case, the facts which are on record are not in dispute between the parties. In this case, the respondent has admitted that at the time of checking, he has already collected the amount of fare from the passengers but his defence was that before he could issue the tickets to such passengers, his bus was checked by the checking party and he was not allowed to issue the tickets and unpunched tickets were recovered from the respondent workman. It is also an admitted fact that the concerned passengers had boarded from Una for Bhacha and the bus had crossed the distance of 4 kms. alone and meanwhile, it was checked by the checking party. In the bus, there were 35 passengers travelling and some time was consumed for

issuance of tickets. Before the labour court, past record of the respondent workman was not produced by the petitioner corporation. Therefore, in absence of his past record and considering four years' service, the labour court has come to the conclusion that this was the first incident in the career of the respondent workman and in exercise of the powers under section 11A of the Industrial Disputes Act, 1947, the labour court found that the punishment of dismissal from service was unjustified. Before the labour court, the respondent workman has filed purshis at Exh. 13 and has not challenged the legality and validity of the departmental inquiry and by filing the purshis at Exh. 25, the respondent workman has waived his claim for back wages. Therefore, the labour court has taken reasonable stand which has been taken by the respondent workman before the labour court by waiving his claim for back wages in the facts and circumstances of the case. According to my opinion, in such circumstances, the labour court has rightly exercised the powers under section 11A of the Industrial Disputes Act, 1947. The contention has been raised by Mr. Dagli that since the inquiry has been admitted and the findings were held to be proved, therefore, the labour court ought not to have interfered with the order of punishment in exercise of the powers under section 11A of the Industrial Disputes Act, 1947. This contention is required to be considered in light of the law laid down by the Apex Court in case of Scooter India Limited, Lucknow and others versus Labour Court, Lucknow and others reported in AIR 1989 SC 149 wherein the apex court has held that even if the legality and validity of the enquiry is admitted and findings of the enquiry officer are established to be proper, valid and proved, even in such a case, the labour court has power under section 11A of the Industrial Disputes Act, 1947 to grant some relief to a workman when the labour court is satisfied that the dismissal order is unjustified in view of the facts and circumstances of the case. In para 7 of the decision in case of Scooter India Ltd. (supra), the apex court has held as under:

> "7. The High Court has considered at length the nature of the powers conferred on the Labour Court by Section 6(2A) of the Act for setting aside an order of discharge or dismissal of a workman and substituting it with an order of lesser punishment and as such it cannot be said that the High Court has failed to consider the facts in their entirety. As regards the third contention we may only state that the Labour Court was not unaware of the nature of the

charges framed against the respondent or the findings rendered by the Inquiry Officer and the acceptance of those findings by the Disciplinary Authority. The Labour Court has observed as followed :-

"The workman has unfortunately to blame himself for much of the bad blood which has developed between him and the management and therefore, his conduct motivated by ideals which are not relevant has been far from satisfactory. In so far as it was rough, bordering on rudeness and with highly exaggerated sense of his duties. In these circumstances it will meet the ends of justice if back wages to the extent of 75% are allowed to the workman. I would make my award accordingly, but there shall be no order as to costs."

It cannot therefore be said that the Labour Court had exercised its powers u/S. 6 (2-A) of the Act in an arbitrary manner and not in a judicial manner. The Labour Court has taken the view that justice must be tempered with mercy and that the erring workman should be given an opportunity to reform himself and prove to be loyal and disciplined employee of the petitioner company. It cannot therefore, be said that merely because the Labour Court had found the inquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the respondent in exercise of its powers u/S. 6 (2-A) of the Act."

Thus, in view of the observations made by the apex court that even in case of inquiry held to be valid and findings recorded by the inquiry officer are held to be legal and valid, the labour court is having powers under section 11A of the Industrial Disputes Act, 1947 if the labour court is satisfied that looking to the facts and circumstances of the case, order of punishment is unjustified and the labour court is entitled to grant some relief as it thinks fit. These are the clear powers vested with the labour court as per the statutory provisions and such powers were rightly exercised by the labour court and there is no jurisdictional error committed by the labour court while granting relief of reinstatement without back wages and in imposing

punishment of stoppage of two annual increments with future effect. Considering the gravity of the admitted misconduct and the purshis filed by the workman before the labour court, the labour court has made award of reinstatement without back wages for the intervening period and has imposed punishment of stoppage of two annual increments with future effect which is having recurring effect upon the respondent workman, and if calculated, the loss that may be suffered by the workman pursuant to such punishment would run in thousands of rupees. In view of this, the punishment imposed by the labour court of stoppage of two annual increments with future effect is having recurring effect upon the respondent workman, and, therefore, same is proper and no more punishment is required to be imposed upon the respondent workman as suggested by Mr. Dagli, learned advocate for the petitioner corporation.

Considering the award made by the labour court, the labour court has given cogent reasons for interfering with the impugned order of punishment in exercise of the powers under sec. 11A of the Industrial Disputes Act. The labour court has not committed any jurisdictional error. No procedural irregularity has been pointed out.

In such circumstances, as per the decision of the apex court in case of IOB versus IOB Staff Canteen Workers' Union reported in 2000 SCC Lab. & Service, 471, while exercising the powers under Article 226 and/or 227 of the Constitution of India, the High Court cannot reappreciate the findings of fact and it is not having appellate powers. As per the said decision, insufficiency of evidence or that another view is possible is also no ground to interfere with the award made by the concerned court. As per the decision of the apex court in case of Sugarbhai M. Siddiq and Others versus Ramesh S. Hankare (Dead) by LRs, reported in (2001) 8 SCC 477, as regards the scope of powers of the High Court under Article 227 of the Constitution of India, the apex court has held that the High Court is concerned not with the decision of the lower court or tribunal but with its decision making process. The apex court has also held that the High Court must ascertain whether such court or tribunal had jurisdiction to deal with a particular matter and whether the impugned order is vitiated by procedural irregularity. In the instant case, learned advocate Mr. Dagli has not been able to point out that the labour court was not having jurisdiction. He has also not been able to point out that the impugned award is vitiated by any procedural

irregularity and, therefore, same is required to be quashed and set aside.

Therefore, in view of these observations made by the apex court as regards the scope and ambit of the powers of the High Court under Article 226 and/or 227 of the Constitution of India, according to my view, considering the factual aspects of the matter as well as the merits of the matter, the labour court was right in exercising the powers in favour of the respondent workman and the labour court was also right in granting relief of reinstatement without back wages and in imposing the punishment of stoppage of two annual increments with future effect. According to my opinion, since there is no jurisdictional error and/or procedural irregularity committed by the labour court, there is no substance in this petition and the petition is required to be dismissed. Same is, therefore, dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated.

The respondent workman has remained out of job since 10th July, 1995 and the labour court has made the impugned award on 15th March, 2000. This petition challenging the said award has been filed by the petitioner on 19th September, 2000. This Court has issued rule and granted ad.interim relief on 16th January, 2001. Learned advocate Mr. Pathak appearing for the respondent workman has submitted that though the order of reinstatement has been stayed and the petitioner corporation has been ordered to comply with the provisions of sec. 17B of the Industrial Disputes Act, 1947 as per the order passed by this Court (Coram : D.H. Vaghela,J.) in Civil Application No. 12472 of 2001 dated 26th December, 2001, the petitioner corporation has not made any payments so far to the respondent workman. He has, therefore, requested to direct the petitioner to implement the award of the labour court within some reasonable period.

Considering the submissions made by Mr. Pathak, it is directed to the petitioner corporation to reinstate the respondent workman in service with continuity of service and without back wages for the intervening period from 10th July, 1995 to 15th March, 2000, within one month from the date of receipt of copy of this order. It is also directed to the petitioner to pay full wages to the respondent workman from the date of the award i.e. 15th March, 2000 till the date of actual reinstatement of the workman in service, within two months from the date of receipt of copy of this order. While making payment

of full wages to the respondent workman for the period from the date of the award till the date of his actual reinstatement, the petitioner will be at liberty to adjust the amount paid to the respondent workman under sec. 17B of the Industrial Disputes Act, 1947, if at all such payment under sec. 17B of the Industrial Disputes Act has been made by the petitioner to the respondent workman.

Dt. 10.1.2002. (H.K. Rathod,J.)

Vyas